



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2017-0595]

RIN 1625-AA09

Drawbridge Operation Regulation; Jamaica Bay, Queens, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule with request for comments

SUMMARY: The Coast Guard is modifying the operating schedule that governs the Marine Parkway (Gil Hodges) Bridge across Jamaica Bay (Rockaway Inlet), mile 3.0, at Queens, NY. This temporary interim rule is necessary to accomodate Metropolitan Transportation Authority's (MTA) (the owner of the Marine Parkway Bridge) unexpected emergency repairs requiring a complete closure of the Bridge and an extension of time for their completion. The active deviation allows for opening of the bridge with two-hours of advance notice and expires at the 180th day. Existing federal regulations do not allow back-to-back deviations.

DATES: This temporary interim rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 11:59 p.m. on May 25, 2018. For the purposes of enforcement, actual notice will be used from 12:01 a.m. on November 27, 2017 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comments and related material must reach the Coast Guard on or before
[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL
REGISTER].

ADDRESSES: You may submit comments or view documents mentioned in this
preamble as being available in the docket, go to <http://www.regulations.gov>. Type
USCG-2017-0595 in the “SEARCH” box and click "SEARCH." Click on Open Docket
Folder on the line associated with this rulemaking.

See the “Public Participation and Request for Comments” portion of the
SUPPLEMENTARY INFORMATION section below for instructions on submitting
comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this
temporary final rule, call or e-mail Judy K. Leung-Yee, Bridge Management
Specialist, U.S. Coast Guard; telephone 212-514-4336, e-mail Judy.K.Leung-Yee@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On July 6, 2017, we published a temporary deviation entitled, “Drawbridge
Operation Regulation; Marine Parkway Bridge, Jamaica Bay, Queens, NY” in the
Federal Register (82 FR 31255). Although we did not request public comments, we

conducted a public outreach and received no objections to the temporary deviation. No complaints have been submitted during the current temporary deviation's operation.

The Coast Guard is issuing this temporary interim rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. During the recent replacement/rehabilitation of lift span systems, water was discovered inside the power and communication cables from the main electrical rooms on the lower level of the towers to the machinery rooms at the tops of the towers. In addition, structural steel for riser conduit support is also in need of immediate repairs and/or replacement. We must modify the operation schedule of the Bridge by November 27, 2017 to allow the bridge owner to conduct emergency repairs, but we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the modification.

We are issuing this rule under 5 U.S.C. 553(d)(3) and for the reasons stated above, the Coast Guard finds that good cause exists for making it effective in less than 30 days after publication in the *Federal Register*.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. The Coast Guard is modifying the operating schedule that governs the Marine Parkway Bridge

across Jamaica Bay, mile 3.0, at Queens, New York. The Marine Parkway Bridge is a vertical lift bridge offering mariners a vertical clearance of 55 feet at mean high water and 59 feet at mean low water in the closed position.

The normal operating schedule for the Bridge is listed at 33 CFR 117.795(a). MTA, the bridge owner, has requested this modification as additional time is required to perform the emergency repairs as described above.

The waterway is transited by seasonal recreational traffic as well as commercial vessels, largely tug and barge combinations. The 55 foot vertical clearance while the bridge is in the closed position offers the bulk of commercial traffic sufficient room to transit under the bridge in the closed position. During the time period of October 2016 to October 2017, there have been twelve (12) scheduled bridge openings for commercial vessel transit, two of which were cancelled prior to operation. Vessels that can pass under the bridge without an opening may do so at all times. The bridge will not be able to open for emergencies. There is no immediate alternate route for vessels unable to pass through the bridge when in the closed position.

IV. Discussion of the Temporary Interim Rule

The Coast Guard has issued a Temporary Interim Rule from the operating schedule that governs the the Marine Parkway Bridge across Jamaica Bay, mile 3.0, at Queens, New York, in order to complete emergency repairs. The rule is necessary to accommodate the completion of the emergency repairs before the next boating season begins. This rule allows the bridge to remain in the closed position from 12:01 a.m. on November 27, 2017 through 11:59 p.m. on May 25, 2018.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protesters.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the fact that the emergency bridge closure period is in the winter season and the majority of vessels will be able to successfully transit through the draw of the bridge without an opening.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be

small entities, for the reasons stated in section V.A above, this interim rule will not have a significant economic impact on any vessel owner or operator due to the clearance level while in the closed position and the fact the rule would be applied during at a time of year when vessel traffic is at its lowest.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or

procedures for drawbridges. This action is categorically excluded from further review, under figure 2-1, paragraph (32)(e), of the Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the “For Further Information Contact” section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have

provided. For more about privacy and the docket, visit
<http://www.regulations.gov/privacyNotice>.

Documents mentioned in this Temporary Interim Rule as being available in this docket and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. In § 117.795, effective from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] to 11:59 p.m. on May 25, 2018, suspend paragraph (a) and add paragraph (d) to read as follows:

§ 117.795 Jamaica Bay and Connecting Waterways.

* * * *

(d) The draw of the Marine Parkway Bridge, mile 3.0 over Rockaway Inlet, will not open for the passage of the vessels. The drawbridge will return to its regular operating schedule on May 26, 2018.

Dated: November 21, 2017

S. D. Poulin,
Rear Admiral, U.S. Coast Guard
Commander, First Coast Guard District
[FR Doc. 2017-26431 Filed: 12/6/2017 8:45 am; Publication Date: 12/7/2017]